United States Bankruptcy Court
Central District of California
San Fernando Valley
Geraldine Mund, Presiding
Courtroom 302 Calendar

Tuesday, May 16, 2023 **Hearing Room 302**

10:00 AM
1:00-00000 **Chapter**

#0.00 **The 10:00 am calendar will be conducted remotely, using ZoomGov video and audio.**

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: https://cacb.zoomgov.com/j/1611572130
Meeting ID: 161 157 2130
Password: 457401

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-7666
Meeting ID: 161 157 2130
Password: 457401

Judge Mund seeks to maintain a courtroom in which all persons are treated with dignity and respect, irrespective of their gender identity, expression or preference. To that end, individuals are invited to identify their preferred pronouns (he, she, they, etc.) and their preferred honorific (Mr., Miss, Ms., Mrs., Mx, M, etc.) in their screen name, or by advising the judge or courtroom deputy.

United States Bankruptcy Court
Central District of California
San Fernando Valley
Geraldine Mund, Presiding
Courtroom 302 Calendar

Tuesday, May 16, 2023 **Hearing Room 302**

10:00 AM
CONT... **Chapter**

Docket 0

Tentative Ruling:

- NONE LISTED -

United States Bankruptcy Court
Central District of California
San Fernando Valley
Geraldine Mund, Presiding
Courtroom 303 Calendar

Tuesday, May 16, 2023 **Hearing Room 303**

10:00 AM

1:20-11006 Lev Investments, LLC **Chapter 11**

Adv#: 1:21-01020 Lev Investments, LLC v. Feygenberg et al

#1.00 Status Conference re: First Amended Complaint Objecting to Claim and Counterclaim filed by Plaintiff Lev Investments, LLC).

fr. 11/9/21; 2/8/22, 5/3/22; 10/25/22; 1/10/23, 2/21/23; 3/14/23

STIP TO DISMISS ADVERSARY PROCEEDING FILED 4/13/23 jc

Docket 23

***** VACATED *** REASON: Order approving stip to dismiss entered 4/17/23. [Dkt. 53]**

Tentative Ruling:

Off calendar. Stipulation to dismiss was filed and the order has been entered.

Party Information

Debtor(s):

Lev Investments, LLC	Represented By David B Golubchik Juliet Y Oh Richard P Steelman Jr

Defendant(s):

Ruvin Feygenberg	Represented By John Burgee
Michael Leizerovitz	Represented By John Burgee
Sensible Consulting and	Represented By John Burgee

Plaintiff(s):

Lev Investments, LLC	Represented By Juliet Y Oh David B Golubchik

10:00 AM

CONT... Lev Investments, LLC **Chapter 11**

Trustee(s):

Caroline Renee Djang (TR) Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Geraldine Mund, Presiding
Courtroom 303 Calendar

Tuesday, May 16, 2023 **Hearing Room 303**

10:00 AM

1:13-10386 Shirley Foose McClure **Chapter 7**

#2.00 Motion For Allowance And Payment Of Administrative Expenses Pursuant by Shirley McClure To 11. U.S.C. Section 503(b)1(A)

fr. 10/11/22, 11/15/22; 1/10/23; 1/31/23; 3/14/23

Docket 2143

***** VACATED *** REASON: Hearing continued to 6/6/23 pursuant to Order entered 3/29/23 [Dkt. 2329]**

Tentative Ruling:

Continued to June 6, 2023 at 10:00 a.m. as set forth in the Memorandum and Order Granting in Part, Denying in Part, and Contiuing in Part.

Party Information

Debtor(s):

Shirley Foose McClure	Represented By Andrew Goodman Yi Sun Kim Robert M Scholnick James R Felton Faye C Rasch Faye C Rasch Lisa Nelson Michael G Spector

Trustee(s):

John P. Reitman	Represented By John P. Reitman Jon L. Dalberg Rodger M. Landau
David Keith Gottlieb (TR)	Represented By Richard A Marshack Laila Masud Leonard M Shulman

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 7**

#3.00 Motion for Allowance and Payment of Administrative Expense and Services Claims Pursuant to 11 USC Section 503(b).

fr. 10/11/22, 1/10/23; 1/31/23, 2/21/23; 3/14/23

Docket 2140

***** VACATED *** REASON: Hearing continued to 8/22/23 at 10:00 AM pursuant to ruling on 4/11/23.**

Tentative Ruling:

For some reason, Mr. Williams filed this motion twice as dkt. 2127 and 2140. Some of the responses were filed under one number and some under the other. This makes for a very confusing docket.

Mr. Williams, please go through the two dockets (you can see the list of documents on CM/ECF using the "report" tab and then "motions and related filings" and provide my courtroom deputy with a list of duplicates. Let's get them all under one motion. You can work with Patty Garcia, 818-587-2850. I THINK THAT THE CLERK'S OFFICE HAS HANDLED THIS, BUT I WILL CHECK ON IT.

THE FOLLOWING TENTATIVE RULING IS ALSO BEING DOCKETED SO THAT IT WILL BE EASIER TO READ. ALTHOUGH MS. McCLURE IS INCAPACITATED AND UNABLE TO PARTICIPATE, THIS HEARING WILL GO FORWARD BECAUSE SHE IS NOT A DIRECT PARTICIPANT AND HER RESPONSES HAVE BEEN FILED AND REVIEWED.

Admin Claim of Jason McClure [dkt. 2140, 2129, 2130] [dkt. 2127]

Shirley McClure was the Debtor-in-Possession from the filing of this case at the end of 2012 until a chapter 11 trustee was appointed in August 2016. The case was converted to chapter 7 on May 24, 2022. Jason McClure, her son, provided substantial benefit to the estate by providing loans, services and paying expenses. He allowed payment of funds owed to him from Carrera to be used to benefit and preserve the estate. The Court

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

was aware of this.

Carrera is a corporation owned by Jeffrey McClure, Jason's older brother. At the time of the filing of this case, there were 16 properties used as residential rentals. Of these, ten had notices of default. The cash collateral agreement required 100% interest payments on seven of the properties and somewhat lower payments on the other three properties. There had to be an immediate infusion of funds for the case to survive.

As of the petition date, Jason was owed $225,000 by Carrera for pre-petition services. Jason had Carrera redirect this to the estate to preserve the estate's assets. Jason also provided labor and services directly to the estate and paid ongoing critical expenses of the estate.

11 USC § 503(a) allows actual and necessary costs and expenses of preserving the estate to be deemed to be administrative claims. These are claims that have arisen with the DIP and directly and substantially benefitted the estate. *In re Dak Indus.*, 66 F.3d 1091 (9th Cir. 1995).

Jason is an insider and had no management role as to the administration of the chapter 11 case. And he is not a professional as defined by §327(a). Except for the property on Gregory, in which he is a 50% owner, he was not acting in his own self-interest – he was acting to protect his mother. He has not benefitted from the substantial contribution that he made. He spent large amounts of uncompensated time and thus forfeited market rate jobs that he could have taken. He expected to be reimbursed. To the extent that he was working in his self-interest, this does not preclude reimbursement. *In re Cellular 101, Inc.*, 377 F.3d 1092, 1098 (9th Cir. 2004).

Jason's claim is documented and was reported in the DIPS' MORs such as the September-October 2014 MOR that has a detailed chart itemizing Ms. McClure's family's contributions in increasing the monthly rental income substantially as well as the substantial increase in the rental properties' value. The estate had no funds to hire a market rate contractor to provide the work.

Jason is a creditor as defined by §101(10). His contributions were substantial, made under extraordinary circumstances, and provided a substantial contribution to preserving the estate. They allowed the case to continue under chapter 11, enabled the rental properties to increase their monthly rental income and also to increase in value. His contribution to accountant and attorney fees enabled Shirley to reach a settlement with the

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

Franchise Tax Board. He had to agree to drop his challenge to the FTB and incur $50,000 in assessments. This saved the estate over $200,000.

Jason, Jeffrey and Shirley ran a "mom and pop" rental business from 2007. Providing money and services is part of the ordinary course of a "mom and pop" business and in their family practice. Under §363(c)(1), no prior court approval is needed for the DIP to use estate property in the ordinary course of business.

Jason's Administrative claim breaks down as follows:

1. Funds that he re-directed from Carrera to and on behalf of the estate:
   Post-petition payments Carrera made on Jason's behalf directly to the Estate - $73,777.89
   Post-petition payments Carrera made on Jason's behalf to third parties on behalf of the Estate - $174,569.75
   But because Jason was only entitled to receive $225,000 from Carrera, that is the total amount of his administrative claim from this source.
2. Beyond the monies he contributed from the Carrera funds, Jason also contributed $28,836.55 directly to the Estate and made payments to third parties on behalf of the Estate in the amount of $19,530. This is a total of $48,366.55.
3. There were in-kind contributions totaling $208,600.00.

The total claim is $481,966.55.

Opposition by Weintraub & Selth [dkt. 2163]

This should be denied because creditors and the trustee were never given an opportunity to evaluate and be heard as to the alleged loans and advances. Also, the alleged loans and advances were not authorized by the Court. There is insufficient evidence. This request is long after the alleged loans were made.

Section 364 requires a notice and hearing. This is especially true when the proposed lender is an insider or the debtor herself. These are not "ordinary course" loans and would not be approved as such. Therefor the loan transaction may be relegated to unsecured status or cancelled or disregarded.

10:00 AM
CONT... Shirley Foose McClure **Chapter 7**

Opposition by Chapter 7 Trustee [dkt. 2165]

This motion was brought under §503(b)(3)(F) or (b)(4). Jason does not qualify under either section. There was no committee and he is not an attorney or accountant.

As to §503(b)(1)(A), he needs to show that the debt arose from a transaction with the estate and that it directly and substantially benefited the estate. The burden is on Jason McClure to show that his claim (1) arose from a transaction with the estate and (2) directly and substantially benefited the estate. *Noah Bagel Corp. V Smith* (*In re BCE* W), 319 F.3rd 1166, 1172 (9th Cir. 2003). In fact, there is little evidence to support that Jason McClure contributed anything to the estate and that the estate benefited from any of these supposed contributions.

What is really happening here is that Jason made unsecured loans to the estate that he now wants to be repaid as administrative priorities. There was no court approval and these were not in the nature of ordinary course of business transactions.

Section 364 can obtain unsecured debt as an administrative priority only if it is in the ordinary course of business. Otherwise it needs court approval after notice and a hearing. There are two tests: the vertical dimension, or creditor's expectation, test and the horizontal dimension. This fails to meet either test.

The vertical dimension is seen from the vantage point of a hypothetical creditor and inquires whether the transaction subjects a creditor to economic risks of a nature different from those he accepted when he decided to extend the loan. Courts tend to look at the debtor's pre-petition business practices compared to the post-petition ones. Jason argues that prepetition they had a "mom-and-pop" arrangement and supported each other without contracts or written repayment terms. There is no evidence of these prepetition business practices to show that the post-petition ones were consistent with them.

The horizontal dimension looks at the practices of similar businesses. There is no evidence that the behavior of loaning money, providing services to each other, and co-signing loans for each other was normal in a mom-and-pop business. While the loaning of money and providing services between the McClures might meet that requirement, Jason McClure fails to identify

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

what loans were extended, the terms of the loans, whether there was an amount outstanding, or any other details that are typical of real estate transactions. He fails to specifically identify how these funds benefited the estate and its creditors. It is unreasonable to expect creditors to anticipate that the debtor will incur hundreds of thousands of dollars in debt for support from her son solely because they run a mom and pop rental business. No notice was given to creditors or the estate so that there could be an objection to the terms of the loans.

These alleged loans were not incurred in the ordinary course of business and cannot be allowed as an administrative expense.

As to the expense of $225,000 for directing Carrera to pay to the estate funds that it owes to Jason, there was no written agreement between the estate and Jason McClure that his compensation assignment was to be treated as a loan rather than a gift. Jason was not employed by the estate or empowered by the court to act on behalf of the estate in any capacity. The exhibits itemizing expenses and services rendered do not show who drafted them or whether these expenses and services are legitimate. There is no evidence that Mr. McClure was the one who performed the services listed in exhibit 1.3 and there was no contractual agreements or communications between Mr. McClure and a representative Carrera evidencing that Carrera hired Mr. McClure or that there was a subsequent assignment between Carrera and Mr. McClure of Mr. McClure's compensation to the estate. Further, it is unlikely that these transactions benefited the estate because many of them show a personal benefit by the purchases made on behalf of the estate.

As to the payments for the DIP's business including hardwood floor repairs, utility expenses, unlawful detainer representation for a rental property, and legal expenses, these transactions were made by Carrera and not by Mr. McClure. Ex. 1.2 shows that many of the expenses paid by Carrera were made by Carrera and not Jason. So Carrera would be the proper administrative creditor Therefore, the administrative expense, if there is one, belongs to Carrera and not to Mr. McClure.

Concerning the administrative expense for $28,836.55, some of the MOR's only show that these monies were received from "family". There is no evidence that he is the unidentified family member that contributed these

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

funds or that he can directly trace the funds from his account to the estate's account. And there was no court approval to borrow these funds, which is required by section 364. There is nothing that shows that these funds were loans and would actually have to be repaid.

As to the administrative expense for $19,530 to pay professionals on behalf of the estate, no cashier's checks (or other checks) are provided as evidence. Beyond that, there was no prior court approval for any loan and that is fatal.

The claim for $208,600 for "in kind" contributions for services allegedly rendered and payments that he made to other laborers who assisted him on behalf of the estate is unsupported by evidence of these projects, such as contractual agreements between him and the debtor. He does not explain the value of the commission or labor for these projects or provide evidence that his services increased the sales price or that these services were actually rendered. And no court approval was ever obtained authorizing his retention and compensation under section 327. Beyond that, as an insider, he is not entitled to compensation in a Chapter 11 absent notice of setting of compensation to creditors section 503(c).; LBR Rule 2014-1.

Opposition by Landau Law [dkt. 2168]

Factual Issues:

#1 - Shirley McClure did not reveal that there were any administrative claims owing to Jason McClure. This was not included as an administrative claim in Ms. McClure's first disclosure statement filed in October 2013. On December 20 2013 she filed her first amended disclosure statement which also failed to mention a claim of any kind held by Jason McClure. At that time, Jason McClure contends that he was already owed an administrative claim of approximately $230,000. This would have quadrupled the amount of administrative claims against the bankruptcy estate from the $75,000 disclosed in the second disclosure statement. On May 3rd 2016, Shirley McClure filed another disclosure statement which also does not make mention of any claim held by Jason McClure against the estate.

There are other instances where Ms. McClure gave sworn testimony that Jason McClure did not possess the claim that he now asserts.

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

#2 - as to the money from Carrera enterprises, Jason states that the money was owed to him by Carrera from the sale of a piece of real property in Bakersfield, CA. However, it was not Carrera that purchased the property in the spring of 2010, but Shirley McClure who did so. Soon after purchasing the Bakersfield property, Ms. McClure conveyed a lien on the property to Carrera, which was an entity owned 50-50 by Ms. McClure and her late son Jeffrey McClure. Shirley McClure remained the sole owner of the property through August 2012 at which point she transferred the Bakersfield property to Carrera. To the extent that Jason actually worked on the Bakersfield property, that work had to have been for the benefit of Shirley McClure and not of Carrera since Carrera was only a mortgagee of the property. Therefore at least $125,000 of the $225,000 allegedly owed to Jason for work performed on the Bakersfield property never could have been owed by Carrera.

The monies that Carrera transferred to the bankruptcy estate were from a distribution to Shirley McClure based on her 50% pre-petition interest in Carrera. This was not a loan and was not from Jason McClure. This is demonstrated by the retainer received by Greenberg and Bass which stated that the firm received $131,460 retainer and the source of that was from the debtor. "As set forth in the debtor's schedules, debtor has a 50% interest in a corporation known as Carrera Enterprises, Inc. Prior to the filing of the Petition, Carrera sold a parcel of property. The retainer came from the proceeds that debtor received as a 50% owner of Carrera. The funds were not and are not subject to any lien or incumbrance." [docket 24 page 2; see also docket 104 paragraph 7]. Landau Law also notes that Carrera paid Greenberg and Bass a portion of its retainer, being approximately $81,000, prior to the filing of this bankruptcy case. [Docket #82 page three.]

Therefore this money was not a loan from Carrera or Jason McClure. Had it been so, Shirley McClure would have been obligated to list the debt owed to Carrera or to Jason McClure on her bankruptcy schedules, which she did not do.

In October 2019, Ms. McClure sought the return of the entire $125,000 prepayment retainer that was paid to Greenberg by Carrera, affirming that the funds were proceeds of her exempt partnership interest in Carrera. [Docket number 1722, page 16.]

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

#3 - Jason McClure did not have the ability or resources to lend the bankruptcy estate hundreds of thousands of dollars, with or without a loan agreement and court approval. In September 2013, Shirley McClure filed a motion for authority to pay Jason $22,750 for his 5% interest in one of the properties jointly owned with him and stated that Jason McClure requires cash for living expenses, including [child] support." Jason filed his own declaration stating that he has requested Shirley to purchase his 5% in the the La Mirada property in exchange for $22,750 because he needed the funds to cover his child support obligation, necessary repairs and maintenance to his work vehicle, related expenses and miscellaneous living expenses. At that point he was $6400 in arrears on his child support obligation. [Docket number 234, p. 9] Further it appears from the debtor's monthly operating reports that Shirley was paying for a variety of Jason's hobbies including running and bowling.

Legal issues

#1 - the debt claimed was never authorized and was not in the ordinary course of business as set forth in Bankruptcy Code section 364. Where there is no court approval to obtain unsecured credit outside the ordinary course of business, the debt is cancelled by the court. Shirley McClure is not contending that there was court approval. Therefore the debt must have been in the ordinary course of business.

The court looks at two tests to determine whether the loan was in the ordinary course of business. Using the vertical test, one looks at the history of the transactions, namely the pre-petition and post-petition conduct. Here there is no evidence that Jason McClure ever loaned Shirley McClure any money pre-petition and it appears he did not do so at least in the year prior to bankruptcy. The debtor's schedules do not list any debt owed to Jason McClure at the time of the filing or any payments to him within the year prior to her bankruptcy filing. In looking at the expectation of creditors, the creditors successfully opposed Shirley McClure's motion to purchase Jason's property interest And they did not expect her to enter into financial transactions with her relatives at will.

Looking at the horizontal test, one reviews industry practice. The

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

burden is on the movant to do this. Just because Shirley and Jason are mother and son is not sufficient to establish or meet a standard of ordinary course.

#2 - Jason McClure is not a creditor and therefore cannot hold an administrative claim under section 503(b)(3)(d) or (b)(4). If a claimant is not a creditor or one of the other entities listed in section 503, the claimant is ineligible as a matter of law to receive a claim under those sections. To meet the definition of creditor, Jason had to have had a pre-petition claim that existed on December 21 2012, the date of the order of relief. He was never listed as a creditor on Shirley McClure's schedules or on any of her three disclosure statements; he did not file a claim before the claims bar date that was set in the Chapter 11 of October 1, 2013. He did not file a claim before the claims bar date set in a Chapter 7 of September 9, 2022. He does not meet any of the other definitions of a creditor.

#3 - Jason McClure is an insider of Shirley McClure and thus was required to meet the requirements in order to obtain compensation. Under local bankruptcy rule 2014-1(a), no compensation may be paid to an insider of the debtor until a notice describing the insider's proposed compensation is served on the United States Trustee etc. This was not done. The ninth circuit has held that an insider's dealings with a bankrupt corporation must be subjected to rigorous scrutiny. The burden is on the insider not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the debtor and those interested therein. *In Re Marquam INVU Corp,* 942 F.2nd 1462 (9th Cir. 1991).

Therefore Jason is not entitled to be compensated for any work that he may have performed for the benefit of the bankruptcy estate.

Mr. Landau, as he has previously requested, seeks a criminal referral.

Supplemental Declaration of Shirley McClure [dkt. 2256]

This contains the following exhibits:

1. A transcript of the 9/9/14 hearing showing the efforts of Mr. Litt and

10:00 AM
CONT... Shirley Foose McClure **Chapter 7**

his attorney to tank the chapter 11 and get rid of the state court action.

2. A 12/13/12 email with the real estate agent as to 30th Street showing that the current tenants offered to purchase for $1.4 million, but wanted a credit of $108,813 for work to be done. They left the property, but Jason did the work by 3/1/13 and shortly thereafter it sold for $1,625,000.
3. A transcript of 8/8/14 where the real estate agent advised the court that repair, painting, and staging of Hewitt had a value of over $12,000.

Trustee's Objection [dkt. 2289]

¶2 – *overrule other than the identification of the transcript*

¶3 – *overrule as to FRE 1002 – copies of documents are acceptable unless challenged for authenticity. Sustain as to parts of FRE 801, but all of tis is not really relevant. See later discussion. There is no way to know whether Jason's work increased the value or other factors were involved (ie. tenants wanting to "low ball" or economic issues). It is clear that the unit would need work in order to at least freshen it before it could be listed and sold after having been occupied.*

¶4 – *overrule other than identification of the transcript*

Supplemental Declaration of Jason McClure [dkt. 2257]

This is in support of the construction work that he did. The exhibits to his original declaration [dkt. 2129] show the construction work that he did to specific properties and the expenditures that he made on behalf of the estate.

Declaration of Elena Rivera on C Street Property

She and her husband own a janitorial service and do construction site clean-up, etc. They provided these services to the debtor. Jason would pay for her to fly to the job site in IN or MI and provide for her food and lodging. In San Francisco, she and her helper would drive up with Jason, who provided food and lodging.

As to C street, it closed in 2010 and was a mess. Jason took almost 2

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

years to rebuild it. He served as the contractor and directed the subcontractors. She lists the work that was done. She also did work for Jason on the Carrera Gregory projects that started before the C Street renovation.

Trustee's Objection [dkt. 2287]

¶2 – *overrule*
¶3 – *overrule*
¶4 – *overrule*
¶6 - *overrule*

Declaration of Eric Orue on improvements to Maui Condominium and 30th St..

In early 2013, Jason hired him to perform skilled carpentry work on the 30th St. house. Jason performed high quality work. He paid Eric for his work.

On two occasions he was flown to Maui to do carpentry work on the condo that the McClures owned. The last time was in spring 2015. Jason worked with him. They were getting the condo ready to be rented.

Trustee's Objection [dkt. 2286]

¶3 – *overrule*
¶4 – *overrule*
¶5 - *overrule*

Declaration of Russell Roney as to Hewitt

Basically Mr. Roney testified that Jason did high quality work in repairing and staging unit #102.

Trustee's Objection [dkt. 2288]

The Trustee objects on a variety of grounds, but the real issue here is relevance. No one is objecting that Jason did quality work on the units. The issue is whether he should be paid for that work because it was not approved by the court and did not benefit the estate. The work done prepetition is not allowed as an administrative claim. The work done to repair the unit between tenants seems to be normal maintenance. Mr. Roney does not add anything as to the cost incurred for this or for preparing it for a sale that never happened.

Declaration of Andrew McClure as to Ostego

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

Andrew McClure is Jason's adult son. He lived in Michigan and personally observed Jason repairing the tornado damage on Ostego.

Trustee's Supplemental Response to Jason McClure's Supplement to Motion for Administrative Claim [dkt. 2285]

Jason has failed to provide evidence that he directly and substantially contributed anything to the estate and that any such contributions benefitted the estate.

Any prepetition work cannot constitute an administrative claim. This specifically includes work done on Feldshaw and Ostego. As to work on various properties, Jason fails to provide clear evidence identifying his specific construction and renovation contributions that arose from a transaction with the estate and directly and substantially benefited the estate as to each property. The Trustee then describes each of the 8 properties that Shirley listed for sale as a DIP. [*Court: there are actually 10 properties on p.7 because 910 Corbett consists of 3 separate condominiums.*]

The issues as to each property are discussed in the objection to the declarations or repeats from prior filings and are not summarized here.

Jason McClure's Reply to Supplemental Oppositions [dkt. 2299]

Jason is not seeking payment for pre-petition work. The information as to pre-petition work was provided only for background to show that he has worked diligently to enhance the Estate's properties.

Besides the earlier filings, Jason has provided substantial evidence that his work directly and substantially benefitted the Estate. Each of the properties was sold and generated income for the Estate. Unlike *In re Marquam Inv. Corp*, cited in the Landau supplemental opposition, Jason has provided tangible services with detailed summaries of expenses and work performed and also photographic evidence to that effect.

ANALYSIS

For Jason McClure (Jason or Mr. McClure) to obtain an administrative claim, he must traverse a road with a variety of branches. At each branch, if he does not meet the legal and factual requirements, his claim is shunted to the side and either becomes an unsecured claim or is totally disallowed.

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

Unfortunately, this appears to be an administratively insolvent estate, so it may not matter whether the claim that is diverted to a side road is determined to be unsecured or disallowed. But we are not there yet.

Jason's claim falls into three categories, each with its own requirements. But there are a few factual and legal findings that are relevant to all of them.

1. Jason McClure is an insider. §101(31)(A)(1).

2. An administrative claim can be awarded "after notice and a hearing" for the "actual, necessary costs and expenses of preserving the estate," which includes wages, salaries, and commissions for services. §503(1)(A).

3. The claim must be for something that directly and substantially benefitted the estate. *Noah Bagel Corp. V Smith* (*In re BCE* W), 319 F.3rd 1166, 1172 (9th Cir. 2003)

4. The burden of proving an administrative expense claim is on the claimant. *Microsoft Corp. v. DAK Indus. (In re DAK Indust.),* 66 F.3d 1091, 1094 (9th Cir. 1995)

5. The Debtor-in-Possession may incur unsecured debt in the ordinary course of business and that is allowable as an administrative claim under §501(b)(1), §364(a)

6. No compensation may be paid to insiders in Chapter 11 until the Debtor files a Notice of Insider Compensation. LBR 2104-1

7. If the unsecured debt is not in the ordinary course of business, the unsecured debt will only be an administrative claim if it is authorized by the court after notice and a hearing. §364(b)

8. "After notice and a hearing" does not require an actual hearing if the opportunity for a hearing is appropriate to the circumstances and no hearing is timely requested by a party in interest. §102(1)

Funds from Carrera - $225,000; Funds from Jason - $48,366.55.

This consists of funds transferred by Carrera to the Estate on Jason's behalf ($73,777.89) and payments made by Carrera on Jason's behalf to third parties ($174,569.75). Ceiling limit is $225,000, which is the maximum of Jason's interest in Carrera.

There is an issue as to whether the funds labeled as "from Carrera" were actually owned by Carrera, property of Jason, or property of Shirley. The paper trail is laid out in Jason's declaration [dkt. 2129, ex. 1.1, 1.2]. Although this does not include original books and records or copies of canceled checks, the Court can accept these statements as true unless the Court finds that payments made by Carrera qualify as the basis for an administrative claim by Jason. But, as more fully discussed concerning monies contributed directly by Jason, the initial issue is whether these were loans or gifts and, if they were loans, were they in the ordinary course of business.

Jason argues that it is both normal in a "mom-and-pop" business for money to be freely transferred between the family members. But he provides no evidence that this is a normal part of such businesses. Nor does he successfully demonstrate that this is, in fact, a "mom-and-pop" business and that it was a normal activity for such transfers to be made. The real properties in question were owned solely by Shirley. Jason, her son, had no legal claim to them, although he appears to have had a 5% interest in a few of them. But, as her son, he certainly had a moral imperative to assist her in her endeavors, as well as a selfish reason so that she would be financially independent of him and his family. But this does not make him a part of her business and it does not transmute HER business into a shared "mom-and-pop" company.

So, while Jason was not a stranger, he was not a direct part of the business. However, this does not mean that the transfers of money and doing the work was not in the ordinary course of Shirley's business. While the Court has some evidence that pre-petition Jason provided services, there is nothing showing him loaning Shirley money to run the business.

Looking at the two articulated tests as to §364, the hypothetical creditor had financial data from Shirley when she took out the mortgages to

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

buy these properties. The history of this case is that the monies came from the some $9 million that Shirley received due to a settlement of her lawsuit with Long Beach. She invested much of it in purchasing these properties, most or all of which were purchases of rental properties with outstanding senior liens that Shirley assumed. No evidence has been put forward to show that the loan applications included money from Jason. It is possible that Shirley revealed her interest in Carrera, but Carrera is not the creditor seeking this administrative claim – Jason is. There is also no evidence that one who owns multiple single family houses or condominiums was habitually loaned money by relatives in order to prevent defaults, provide repairs, maintain the various properties, make mortgage payments, etc. I am sure that this happens in some families, but there is no evidence that it is a common and expected practice that the creditors would expect.

Thus, the transfers of money from Carrera and from Jason do not meet the requirements of being administrative claims.

The other question is whether they were loans or gifts. There is no evidence to support that these were loans (albeit unsecured loans) and therefore for the purposes of this claim they must be considered to be gifts. Shirley had a certain level of sophistication and certainly knew that loans are usually documented by promissory notes or at least memoranda and letters. We have none of these in evidence. Did she and Jason intend that these would be gifts? Perhaps. It is more likely that they expected a large profit from the sales of these properties or, at least, from the income derived from the rents. In that way Jason would be repaid to some extent. But this is mere guesswork on my part.

The Ninth Circuit Court of Appeals has set forth what might meet Jason's burden. In *In Re Marquam INV. Corp.,* 942 F.2d 1462 (9th Cir. 1991), Marquam Corp. owned an office building and several unimproved properties. Warde Erwin, owner of 60% of the Marquam shares of stock, was president of Marquam Corp. and his son Charles was a vice-president and manager of Marquam. Warde and Charles Erwin practiced law as Erwin & Erwin, P.C. The creditor had been a tenant of Marquam and when Marquam sought to evict her to tear down her house, she sued Marquam. Eventually she won and had a judgment for general and punitive damages. Warde filed the Marquam bankruptcy and also a claim in the case on behalf of Erwin & Erwin

for attorney fees for defending Marquam on the state court litigation.

The bankruptcy court found no documentary evidence that Marquam intended to pay Erwin & Erwin attorney fees, but still held – based on oral testimony – that such was the case. The district court reversed and the Ninth Circuit affirmed the district court, largely based on the lack of documentary evidence. The testimony of Warde Erwin that Marquam intended to pay Erwin & Erwin for its work did not meet the burden of rigorous scrutiny placed on an insider.

Jason McClure is an insider to Shirley McClure. And as much as the Court sympathizes and would like to award him the administrative claim that he seeks, he has failed to meet his burden, both as to an administrative claim and as to an unsecured claim.

In-kind contributions - $208,600

Unlike the monetary contributions, there is extensive evidence that Jason provided quality services in the area of maintenance and repair of some or all of the properties. It makes sense that someone who owns properties for rental or sale must provide maintenance and repairs and also extra services to prepare the properties for new tenants or for sale. These were certainly in the ordinary course of Shirley's business and Jason is entitled to reimbursement for payments he made to others and for materials that he purchased. But these all need to be documented in a way that the Court can ascertain who or what they were and for which properties and which services.

As to Jason's own work, this falls under Local Bankruptcy Rule (LBR) 2014-1:

LBR 2014-1 [Employment of Debtor's Principals in Chapter 11 Cases, and Professional Persons][1]

(1) Notice of Setting/Increasing Insider Compensation. No compensation or other
remuneration may be paid from the assets of the estate to a debtor's owners,
partners, officers, directors, shareholders, or relatives of insiders as defined by
11 U.S.C. § 101(31), from the time of the filing of the petition until the

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

confirmation of a plan nor may approved compensation be increased unless the debtor serves a Notice of Setting/Increasing Insider Compensation ("Notice") in accordance with procedures adopted by the United States trustee pursuant to this rule.
(2) Service of Notice. The debtor must: (A) serve the Notice on the United States trustee, the creditors' committee or the 20 largest creditors if no committee has been appointed, any other committee appointed in the case, counsel for any of the foregoing, and any secured creditor that claims an interest in cash collateral, and
(B) provide proof of service to the United States trustee. As a non-filed document, the Notice does not result in the generation and delivery of an NEF, and therefore consent to electronic service via NEF on the United States trustee and other CM/ECF Users is not applicable to the Notice.
(3) Payment of Insider Compensation. An insider may receive compensation or other remuneration from the estate if no objection is received within 14 days after service of the Notice. An insider may receive an increase in the amount of insider compensation or other remuneration previously approved if no objection is received within 30 days after service of the Notice.
(4) Objection and Notice of Hearing. If an objection is timely received, the debtor must set the matter for hearing. The debtor must file a true and correct copy of the Notice, objection, and the original notice of hearing. The debtor must serve not less than 21 days notice of the date and time of the hearing on the objecting party and the United States trustee.

LBR 2014-1 is unique to the Central District of California and is not linked to any national rule that requires notice of insider compensation.

The Court finds no record of a Notice of Insider Compensation for

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

Jason and therefore, under a strict enforcement of LBR 2014-1, he is not entitled to remuneration for his time or work. But in this case it is clear that he performed some services on behalf of the DIP and Estate and he is entitled to reasonable compensation for those services. The Court agrees with Judge Kwan in his unpublished opinion in *In re L. Scott Apparel*, 2019 Bankr. LEXIS 1303, CACB, Jan. 29, 2019 that the insider should have followed the notice provisions of LBR 2014-1, but, "this court will not deny Sharron's administrative claim solely on procedural grounds, and instead elects to address Sharron's claim on its merits to determine whether it is an allowable administrative expense claim for services which were necessary and beneficial to the estate under 11 U.S.C. § 503(b)." at *210.

However, even if such a notice does exist, the Court will need accurate and detailed time records as well as information on the normal rate of compensation for someone at his skill level.

Yet another issue is whether Jason's time and labor were meant to be a gift to the Estate. That can be demonstrated by both the pre-petition actions of Shirley in paying him and also the post-petition ones. Evidence is necessary on this matter.

The other component is the amount of money that he paid to subcontractors and for materials. These are not insider compensation and are debts of the Estate. If a non-insider worker had been hired to perform a task – such as painting the inside of one of the properties of the Estate – and was not paid at the conclusion of his task, he would have an administrative claim against the Estate. If that worker had assigned its claim to a third party who paid him, the assignee would then own the administrative claim. There is no reason to treat Jason any differently from that assignee. But he must provide admissible evidence of what he paid, when, to whom, for which property, and for what specific work. Receipts, cancelled checks, declarations of workers, written contracts, etc. can assist in the accounting that he is required to provide. The claim will only be allowed to the extent that it is supported by these documents.

As to the issue of whether the work was actual and necessary to preserving the estate and substantially benefitted the Estate, the parties seem to have taken a detour off the road by dealing with whether the properties increased in value when sold. First of all, there is no way to know whether the increase was due to Jason's work or to market fluctuation or

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

other factors. As noted above, was the price increase on 30th Street because of the work or because the tenant made a below-market offer due to the filing of the bankruptcy? There is no way to know.

Beyond that, also as noted above, the assets of the Estate were residential properties. If they were occupied, it was necessary to provide maintenance and repairs. If they were vacated, they needed to be cleaned and refreshed and made rentable. If they were to be sold, they needed freshening, staging, etc. All of this was part of the ordinary business of this Debtor, they were actual and necessary, the substantially benefitted the Estate even if the property did not sell, and those providing the services are entitled to compensation.

PROPOSED RULING

SUSTAIN the objections as to the monetary infusion from Carrera in the maximum amount of $225,000.

SUSTAIN the objections as to monies contributed directly by Jason in the amount of $48,366.55.

CONTINUE FOR FURTHER EVIDENCE AS DESCRIBED ABOVE the objections as to amounts that Jason is claiming for his time and work in repairing, maintaining, refreshing, or otherwise keeping the properties in good shape or preparing them for rental or sale.

CONTINUE FOR FURTHER EVIDENCE AS DESCRIBED ABOVE as to the objections concerning any monies that Jason paid from his own accounts or other assets to workers, contractors, subcontractors, laborers, or for materials used to repair, maintain, refresh, or otherwise keep the properties in good shape or preparing them for rental or sale.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi Sun Kim
Robert M Scholnick
James R Felton
Faye C Rasch

10:00 AM
CONT... Shirley Foose McClure **Chapter 7**

Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman	Represented By John P. Reitman Jon L. Dalberg Rodger M. Landau
David Keith Gottlieb (TR)	Represented By Richard A Marshack Laila Masud Leonard M Shulman

United States Bankruptcy Court
Central District of California
San Fernando Valley
Geraldine Mund, Presiding
Courtroom 301 Calendar

Tuesday, May 16, 2023 **Hearing Room 301**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 7**

#4.00 First Application for Approval of Fees and Reimbursement of Expenses by Shulman Bastian Friedman & Bui LLP, Special Fee Review Counsel for the Chapter 7 Trustee

Docket 2344
***** VACATED *** REASON: Continued to 6/6/23 at 10:00 AM pursuant to ruling on 4/11/23.**

Tentative Ruling:

The employment of this firm is on appeal. There is some confusion as to the case number at the district court. As of May 2, our docket [entry on dkt. 2303] shows a new case number of 2:23-cv-03279, but this was filed in March and the case number should have been 2:23-cv-02xxx. Anyway, as of May 2, it does not appear on the district court Pacer system. Nonetheless, because the entire employment is on appeal, it is premature to determine the existence and amount of the fees. I will continue this to some future date and continue to continue it (as needed) until there is a final ruling on the appeal.

Party Information

Debtor(s):

Shirley Foose McClure	Represented By Andrew Goodman Yi Sun Kim Robert M Scholnick James R Felton Faye C Rasch Faye C Rasch Lisa Nelson Michael G Spector

Trustee(s):

John P. Reitman	Represented By John P. Reitman Jon L. Dalberg Rodger M. Landau

United States Bankruptcy Court
Central District of California
San Fernando Valley
Geraldine Mund, Presiding
Courtroom 301 Calendar

Tuesday, May 16, 2023 **Hearing Room 301**

10:00 AM

CONT... Shirley Foose McClure **Chapter 7**

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
Leonard M Shulman
Steven T Gubner
BG Law
D Edward Hays
Shulman Bastian Friedman & Bui LLP

United States Bankruptcy Court
Central District of California
San Fernando Valley
Geraldine Mund, Presiding
Courtroom 302 Calendar

Tuesday, May 16, 2023 **Hearing Room 302**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**
Adv#: 1:21-01021 Reitman v. McClure

#5.00 Status Conference Re: Amended Complaint for (1) for Declaratory Relief that the Trustee May Sell Real Property of the Estate Located at 3401 Gregory Avenue, Fullerton, California Free and Clear of 5% Tenant in Common Interest of Jason McClure Pursuant to 11 U.S.C. § 363(h), (i)) and (j)); (2) Reimbursement of Estate Funds Expended to the Benefit of Such Interest; and (3) for Associated Injunctive Relief Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))),(14 (Recovery of money/property - other)),(72 (Injunctive relief - other))

7/13/21, 8/24/21, 11/9/21; 12/21/21; 1/25/22; 3/22/22; 4/5/22, 7/26/22; 10/11/22, 12/6/22, 1/31/23; 3/14/23

Docket 11

Tentative Ruling:

This was continued to 5/16/23 because settlement discussions were taking place. Nothing new received as of 5/14. What is happening?

Party Information

Debtor(s):

Shirley Foose McClure — Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

United States Bankruptcy Court
Central District of California
San Fernando Valley
Geraldine Mund, Presiding
Courtroom 302 Calendar

Tuesday, May 16, 2023 **Hearing Room 302**

10:00 AM

CONT... Shirley Foose McClure **Chapter 11**

Defendant(s):

Jason McClure — Pro Se

Plaintiff(s):

John P. Reitman — Represented By
Jon L. Dalberg

Trustee(s):

John P. Reitman — Represented By
John P. Reitman
Jon L. Dalberg

10:00 AM
1:20-11952 Michael A Di Bacco **Chapter 7**
Adv#: 1:21-01010 Kline v. Di Bacco

#6.00 Status Conference re: Pretrial conference re: complaint to determine dischargeability of debt
pursuant to 11 U.S.C. Sections 523(a)(2)(A), (4) and (6), and to deny the discharge pursuant to 11 U.S.C. 727(a),(2),(3), (4) and (5)

fr. 3/24/21; 4/21/21, 6/2/21; 1/12/22; 3/23/22(stip); 5/25/22(stip); 7/6/22(stip); 8/17/22(stip); 9/21/22; 1/11/23; 2/22/23 - Transferred from Judge Kaufman 3/22/23, 4/4/23 (stip)

Docket 1

Tentative Ruling:

There is a motion in limine set for hearing on 6/6, so I am continuing this as a pretrial conference to 6/6/23 at 10:00 a.m.

Please note that an order in a different adversary proceeding was mistakenly entered on this adversary docket. The docket now accurately reflects that this was an error, but a BNC notice went out of the dismissal. Although it contains a copy of the order in the other case, please be sure that everyone is aware that this adversary proceeding is NOT dismissed.

Party Information

Debtor(s):

Michael A Di Bacco — Represented By
Leon Nazaretian

Defendant(s):

Michael A Di Bacco — Represented By
Laleh Ensafi

Plaintiff(s):

Michael Kline — Represented By
David Brian Lally

United States Bankruptcy Court
Central District of California
San Fernando Valley
Geraldine Mund, Presiding
Courtroom 301 Calendar

Tuesday, May 16, 2023 **Hearing Room 301**

10:00 AM

CONT... Michael A Di Bacco **Chapter 7**

Trustee(s):

Amy L Goldman (TR) Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Geraldine Mund, Presiding
Courtroom 302 Calendar

Tuesday, May 16, 2023 **Hearing Room 302**

10:00 AM
1:18-11342 Victory Entertainment Inc **Chapter 7**
Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

#7.00 Status Conference re: Trial re: Complaint 1) Avoidance and Recovery of Fraudulent Transfers; 2) Avoidance and Recovery of Preferential Transfers; 3) Preservation of Avided Transfers; 4) Declaratory Relief re: Alter Ego Liability and 5) Turnover of property.

fr. 5/3/22, 9/20/22; 9/23/22, 12/12/22; 2/10/23, 4/4/23

Docket 0

Tentative Ruling:

Continued without appearance to 6/6/23 at 10:00 a.m. A motion to comrpomise has been filed in the main case and an order was lodged. If a s epearate order of dismissal or judgment of the adverary proceeding is needed, please lodge one after the compromise order is signed.

Party Information

Debtor(s):

Victory Entertainment Inc	Represented By George J Paukert Lewis R Landau

Defendant(s):

HALA Enterprises, LLC	Represented By David L Oberg Madison B Oberg
Agassi Halajyan, an Individual	Represented By David L Oberg Madison B Oberg

Plaintiff(s):

Howard M Ehrenberg	Represented By Paul A Beck

United States Bankruptcy Court
Central District of California
San Fernando Valley
Geraldine Mund, Presiding
Courtroom 302 Calendar

Tuesday, May 16, 2023 **Hearing Room 302**

10:00 AM

CONT... Victory Entertainment Inc **Chapter 7**

Trustee(s):

Howard M Ehrenberg (TR) Represented By
Elissa Miller
Paul A Beck